

AO-243 (Rev. 2/95)

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>UNITED STATES DISTRICT COURT</b>		District Southern District of Texas
Name of Movant Baudel Ortiz	Prisoner No.	Case No. 5:05-CR-229-5
Place of Confinement Federal Medical Center, Box 4000, Rochester, MN. 55903-4000		
<div style="display: flex; justify-content: space-between;"> <div> <p><b>United States District Court</b> <b>Southern District of Texas</b> <b>FILED</b> <b>SEP 14 2010</b></p> </div> <div style="text-align: center;"> <p><b>UNITED STATES OF AMERICA</b></p> <p><b>V.</b></p> </div> <div> <p><b>Baudel Ortiz</b> (name under which convicted)</p> </div> </div>		
<p><b>David J. Bradley, Clerk</b> <b>Laredo Division</b></p> <p style="text-align: center;"><b>MOTION</b></p> <p>1. Name and location of court which entered the judgment of conviction under attack <u>U.S. District Court</u> <u>Southern District of Texas, Laredo, Texas.</u></p> <p>2. Date of judgment of conviction <u>October 15, 2008</u></p> <p>3. Length of sentence <u>120 months</u></p> <p>4. Nature of offense involved (all counts) <u>Conspiracy to transport undocumented aliens</u> <u>into the United States for private financial gain by means of a</u> <u>motor vehicle in violation of 8 U.S.C. §§ 1324(a)(1)(A)(v)(I),</u> <u>(1)(B)(i)(R.22-27)</u></p> <p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input type="checkbox"/></p> <p>(b) Guilty <input checked="" type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p> <p>7. Did you testify at the trial?</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>8. Did you appeal from the judgment of conviction?</p> <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>		

9. If you did appeal, answer the following:

- (a) Name of court The Fifth Circuit Court of Appeals
- (b) Result Afirmed the conviction and sentence
- (c) Date of result October 8, 2009

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_
- (4) Did you receive an evidentiary hearing on your petition, application or motion?
- Yes ☐ No ☐
- (5) Result \_\_\_\_\_
- (6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

- (1) Name of court \_\_\_\_\_
- (2) Nature of proceeding \_\_\_\_\_
- (3) Grounds raised \_\_\_\_\_

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(1) First petition, etc. Yes ☐ No ☐

(2) Second petition, etc. Yes ☐ No ☐

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(b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (h) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

Trial Counsel failed to advise Petitioner Ortiz that he would  
face deportation as a result of pleading guilty. Petitioner is  
a permanent resident of the United States, with a permanent "Green  
Card." Also, Counsel advised him that he would receive a "lighter  
sentence" if he would plead guilty and not go to trial. He, instead  
received the statutory maximum.

B. Ground two: \_\_\_\_\_

Petitioner entered a guilty plea, unknowingly and unintelligently.

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

Prior to the Plea Hearing, Trial Counsel advised Petitioner that  
he would face a sentence of imprisonment of up to 63 months. He  
was thereby not aware of the relevant and likely circumstances and  
consequences. The Court did tell Petitioner that the statutory  
sentence was 10 years, but Petitioner believed what his Counsel  
had advised him, 63 months, thereby Petitioner was not knowingly aware

C. Ground three: \_\_\_\_\_

Petitioner's Sixth Amendment Right was violated.

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

Petitioner was found guilty of facts, without admitting to them  
or by a jury, and those facts were then used to increase the  
sentence. The Court had discretion to sentence Petitioner, but  
not to find facts that a jury did not find, then increase his  
sentence because of those facts.

D. Ground four: The Court did not have Jurisdiction to hear the Case.

Supporting FACTS (state briefly without citing cases or law) \_\_\_\_\_  
The amended Bill, H.R. 3190, which became Public Law 80-772 (enacting  
Title 18 of the United States Code) was passed only by the Senate  
and never passed by the House of Representatives. The Bill was never  
certified as required, and was signed by the Speaker of the House  
and President pro-tempore of the Senate, under purported authority  
of a concurrent resolution agreed to by a Congress, without Quorums  
of the respective Houses sitting. (Appendix Pages Provided for Proof)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

Trial Counsel that represented Petitioner in the District Court  
also represented him in the Appeals Court. Trial Counsel did not  
find himself Ineffective, did not raise the other grounds, because  
Trial Counsel never talked to Petitioner about the Direct Appeal.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing Juan Ramon Flores  
201 W. Hillside, Ste. 17, Laredo, TX. 78045, (956)723-2944

(b) At arraignment and plea (same)

(c) At trial (same)

(d) At sentencing (same)

- (e) On appeal \_\_\_\_\_ (same) \_\_\_\_\_
- (f) In any post-conviction proceeding \_\_\_\_\_
- (g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

8-31-10

(Date)



\_\_\_\_\_  
Signature of Movant

Baudel Ortiz  
Reg. No. 46022-279  
Federal Medical Center  
Box 4000  
Rochester, MN. 55903-4000

United States District Court  
Southern District of Texas  
RECEIVED

SEP 14 2010

David J. Bradley, Clerk  
Laredo Division

722-279

Us District Court  
1300 Victoria ST  
Suite 2111  
Laredo, TX - 78040  
United States

INSPECTED BY  
U.S. MARSHALS

Not for  
Janner  
RECEIVED  
SEP 13 2010  
U.S. Probation Office  
Laredo, TX

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